

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the repeal of §§114.610 - 114.612 and §114.616; and new §§114.610 - 114.613.

The commission adopts new §114.610 and §114.612 *with changes* to the proposed text as published in the December 1, 2017, issue of the *Texas Register* (42 TexReg 6689) and will be republished. The repeal of §§114.610 - 114.612 and §114.616; and new §114.611 and §114.613 are adopted *without changes* to the proposal and, therefore, will not be republished.

### **Background and Summary of the Factual Basis for the Adopted Rules**

The commission adopts this rulemaking to implement requirements of Texas Health and Safety Code (THSC), Chapter 386, Subchapter D, as established under Senate Bill (SB) 1731, 85th Texas Legislature, 2017.

The Light-Duty Motor Vehicle Purchase or Lease Incentive Program (LDPLIP or program) was originally created by SB 5, 77th Texas Legislature, 2001, to establish a statewide incentive program for the purchase or lease of light-duty motor vehicles that met emission standards more stringent than those required by federal requirements. The Texas Comptroller of Public Accounts (TCPA) was assigned to administer the program, while the commission was responsible for establishing the program criteria and rules. Although the commission adopted rules for the program, initial funding levels were insufficient for the TCPA to implement the program during the 2002 - 2003 fiscal

biennium. In subsequent years, the legislature did not appropriate funds to the TCPA to implement the program.

In 2013, the 83rd Texas Legislature enacted SB 1727 to substantially change the LDPLIP, including transferring the responsibility for implementation to the commission and establishing new eligibility criteria to provide incentives for the purchase or lease of vehicles powered by compressed natural gas, liquefied petroleum gas, or electricity. The revised program was authorized through August 31, 2015, and funding was appropriated by the legislature for the 2014 - 2015 fiscal biennium. The commission adopted program rules and implemented the program through the statutory expiration date.

SB 1731 re-established the LDPLIP under THSC, Chapter 386, Subchapter D, and included changes to the previous program criteria. A significant change included increasing the maximum incentive for a vehicle powered by compressed natural gas or liquefied petroleum gas from \$2,500 to \$5,000, while the maximum incentive for a vehicle powered by an electric drive remained at \$2,500. SB 1731 also included language authorizing incentives for the purchase or lease of a new motor vehicle that has a dedicated or bi-fuel compressed natural gas or liquefied petroleum gas fuel system installed prior to the first sale or within 500 miles of operation of the vehicle following the first sale.

## **Section by Section Discussion**

### *Subchapter K: Mobile Source Incentive Programs*

#### *Division 2: Light-Duty Motor Vehicle Purchase or Lease Incentive Program*

The commission repeals §§114.610 - 114.612 and §114.616 and replaces the rule language with new language to incorporate the new program criteria established by SB 1731 under THSC, Chapter 386, Subchapter D.

#### *§114.610, Definitions*

The commission adopts new §114.610 to establish definitions for terms used in this division.

In adopted §114.610(2), "Lease" is defined as the use and control of a new light-duty motor vehicle in accordance with a rental contract for a term of 12 consecutive months or more. In adopted §114.610(3), "Lessee" is defined as a person who enters into a lease for a new light-duty motor vehicle.

In adopted §114.610(4), "Light-duty motor vehicle" is defined as a motor vehicle with a gross vehicle weight rating (GVWR) of 10,000 pounds or less. In adopted §114.610(5), a "Motor vehicle" is defined as a self-propelled device designed for transporting persons or property on a public highway that is required to be registered under Texas Transportation Code, Chapter 502.

In adopted §114.610(6), the definition of "New light-duty motor vehicle" is changed from the proposed text. The proposed text defined the term as meaning a light-duty motor vehicle that has never been the subject of a first retail sale. Under the adopted text, the term is defined as meaning a light-duty motor vehicle that has never been subject of a first sale.

The term and definition of "Retail Sale" are changed from the proposed text. In the proposed text, §114.610(6) defined "Retail Sale" as having the meaning defined under Texas Occupations Code, §2301.002. Adopted §114.610(1) includes a definition for the term "First sale," with the meaning as defined under Texas Transportation Code, §501.002. In the Texas Transportation Code, §501.002(8), "First sale" means: A) the bargain, sale, transfer, or delivery of a motor vehicle that has not been previously registered or titled, with intent to pass an interest in the motor vehicle, other than a lien, regardless of where the bargain, sale, transfer, or delivery occurred; and B) the registration or titling of that vehicle.

#### *§114.611, Applicability*

The commission adopts new §114.611(a) to establish that the provisions of this division apply statewide, subject to the availability of funding.

Criteria is adopted in §114.611(b) that a purchase or lease of a new light-duty motor vehicle is not eligible if it is required by any state or federal law, rule or regulation,

memorandum of agreement, or other legally binding document. Under the adopted criteria, these limitations would not apply if, on the date the incentive is awarded, the vehicle change is not required under the listed requirements. Also, the restrictions would not apply if the purchase or lease is required only by local law or regulation or by corporate or controlling board policy of a public or private entity.

*§114.612, Light-Duty Motor Vehicle Purchase or Lease Incentive Requirements*

The commission adopts new §114.612 to establish eligibility requirements and other requirements for applying for and receiving an incentive under this division. Under the adopted criteria in §114.612(a), a purchaser or lessee of a new light-duty motor vehicle powered by compressed natural gas, liquefied petroleum gas, or hydrogen fuel cell or other electric drive may be eligible for an incentive if the vehicle meets the requirements outlined in this subsection and is included on the list of eligible vehicles as compiled by the commission under the adopted provisions of §114.613. Also under the adopted subsection (a), by August 1 of each year Division 2 is in effect and appropriations are available to fund this program, the commission would publish a list of eligible vehicles on its website.

Section 114.612(a) also includes eligibility criteria for vehicles to receive an incentive.

Adopted §114.612(a)(1) includes changes to the proposed text. In adopted

§114.612(a)(1)(D), two uses of the term "first retail sale" are changed to use the term

"first sale." Under adopted §114.612(a)(1), a new light-duty motor vehicle powered by

compressed natural gas or liquefied petroleum gas would need to have four wheels, and be originally manufactured to comply with and have been certified by an original equipment manufacturer or intermediate or final state vehicle manufacturer as complying with, or have been altered to comply with, federal motor vehicle safety standards, state emissions regulations, and any additional state regulations applicable to vehicles powered by compressed natural gas or liquefied petroleum gas. The vehicle would need to have been manufactured for use primarily on public streets, roads, and highways, and would need to have a dedicated or bi-fuel compressed natural gas or liquefied petroleum gas fuel system installed prior to first sale or installed in Texas within 500 miles of operation of the vehicle following first sale, and with a range of at least 125 miles as estimated, published, and updated by the United States Environmental Protection Agency.

Under the adopted criteria in §114.612(a)(1), a compressed natural gas fuel system would need to comply with the 2013 (or newer) National Fire Protection (NFPA) 52 Vehicular Gaseous Fuel Systems Code and American National Standard for Basic Requirements for Compressed Natural Gas Vehicle Fuel Containers. A liquefied petroleum gas system would need to comply with the 2011 (or newer) NFPA 58 Liquefied Petroleum Gas Code and Section VII of the 2013 (or newer) American Society of Mechanical Engineers Boiler and Pressure Vessel Code.

Section 114.612(a)(2) includes eligibility criteria for a light-duty motor vehicle powered by an electric drive. Under the adopted criteria, a new light-duty motor vehicle powered by an electric drive would need to have four wheels and have been manufactured for use primarily on public streets, roads, and highways. The vehicle's powertrain could not have been modified from the original manufacturer's specifications. The vehicle would need to have a maximum speed capability of at least 55 miles per hour and be propelled to a significant extent by an electric motor that draws electricity from a hydrogen fuel cell or from a battery that has a capacity of not less than four kilowatts and is capable of being recharged from an external source of electricity.

Section 114.612(b) and (c) include incentive amounts. Under the adopted criteria, a person who purchases or leases an eligible new light-duty motor vehicle powered by compressed natural gas or liquefied petroleum gas may be eligible to receive a \$5,000 incentive. A person who purchases or leases an eligible new light-duty motor vehicle powered by a hydrogen fuel cell or other electric drive may be eligible to receive a \$2,500 incentive.

Under the adopted criteria in §114.612(d), an eligible vehicle must have been acquired after the date established by the commission in the application solicitation. The purchaser or lessee must complete the application for the incentive, providing all required information, and sign a certification that the purchaser or lessee will register

and operate the light-duty motor vehicle in this state for not less than one year.

Adopted §114.612(e) requires that incentives be applied for using forms developed and provided by the commission and must include the verification of purchase or lease as may be required by the commission.

Adopted §114.612(f) requires that only one incentive would be provided for each eligible new light-duty motor vehicle purchased or leased in this state. Under adopted §114.612(g), the incentive would be provided to the lessee and not the purchaser if the vehicle is purchased for the purpose of leasing the vehicle to another person.

Adopted §114.612(h) requires that a lease of an eligible new light-duty motor vehicle be prorated based on a three-year term. A one-year lease may qualify for 33.3% of the full incentive amount, a two-year lease may qualify for 66.6% of the full incentive amount, and a three-year lease may qualify for 100% of the full incentive amount. Under the adopted criteria, an incentive would only be prorated based on a full-year lease.

#### *§114.613, Manufacturer's Report*

The commission adopts new §114.613 to establish requirements and procedures for manufacturers to submit a report on eligible vehicles and compressed natural gas and liquefied petroleum gas systems that the manufacturer intends to sell in this state. Under adopted §114.613(a), a manufacturer of new light-duty motor vehicles, an



intermediate or final state vehicle manufacturer, or a manufacturer of compressed natural gas or liquefied petroleum gas systems would be required to provide to the executive director a list of the new light-duty motor vehicle models or compressed natural gas or liquefied petroleum gas systems, and the new light-duty motor vehicle models on which the systems are approved for installation, that the manufacturer intends to sell in this state during the model year and that are certified to meet the eligibility standards under §114.612(a).

Adopted §114.613(a) outlines the required contents of the lists to be provided to the executive director by manufacturers. Under the adopted subsection, the list would need to contain the vehicle manufacturer name, vehicle model, and vehicle model year; the intermediate or final state vehicle manufacturer name, if applicable; and the compressed natural gas or liquefied petroleum gas system manufacturer name, system model, and system model year, if applicable. Information about the vehicle would also need to be provided, including the engine displacement, qualifying fuel type, GVWR, and the engine or vehicle family name as listed on the Certificate of Conformity issued by the United States Environmental Protection Agency. If applicable, the compressed natural gas or liquefied petroleum gas system engine or vehicle family name would also need to be provided. The manufacturer would need to certify that the vehicle and compressed natural gas or liquefied petroleum gas system complies with the standards of this division. The commission may also request other information to be provided by the manufacturer.

Under §114.613(b), the list to be submitted by manufacturers must be submitted to the executive director, or the executive director's designee, upon request initially and then no later than July 1 of each year preceding the new vehicle model year.

Adopted §114.613(c) allows a manufacturer to supplement the required list to include additional new light-duty motor vehicle models or compressed natural gas or liquefied petroleum gas systems the manufacturer intends to sell in this state during the model year.

#### **Final Regulatory Impact Analysis Determination**

The commission reviewed the adopted rulemaking in light of the regulatory impact analysis requirements of Texas Government Code, §2001.0225, and determined that the adopted rulemaking does not meet the definition of a "major environmental rule" as defined in that statute. A "major environmental rule" means a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Additionally, the adopted rulemaking does not meet any of the four applicability criteria for requiring a regulatory impact analysis for a major environmental rule, which are listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225, applies only

to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

The rules are adopted in accordance with SB 1731, 85th Texas Legislature, 2017, which amended THSC, Chapter 386 to add a new Subchapter D. The adopted rules add or revise guidelines for a voluntary grant. Because the adopted rules place no involuntary requirements on the regulated community, the adopted rules would not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or public health and safety of the state or sector of the state. In addition, none of these rules place additional financial burdens on the regulated community.

The commission's interpretation of the regulatory impact analysis requirements is also supported by a change made to the Texas Administrative Procedure Act (APA) by the legislature in 1999. In an attempt to limit the number of rule challenges based upon APA requirements, the legislature clarified that state agencies are required to meet these sections of the APA against the standard of "substantial compliance." The

legislature specifically identified Texas Government Code, §2001.0225, as falling under this standard. The commission has substantially complied with the requirements of Texas Government Code, §2001.0225.

The commission invited public comment regarding the draft regulatory impact analysis determination during the public comment period. No comments were received on the draft regulatory impact analysis determination.

### **Takings Impact Assessment**

The commission evaluated the adopted rulemaking and performed an analysis of whether the adopted rulemaking constitutes a taking under Texas Government Code, Chapter 2007. The commission's preliminary assessment indicates Texas Government Code, Chapter 2007, does not apply.

Under Texas Government Code, §2007.002(5), taking means: A) a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the United States Constitution or Section 17 or 19, Article I, Texas Constitution; or B) a governmental action that: i) affects an owner's private real property that is the subject of the governmental action, in whole or in part or temporarily or permanently, in a manner that restricts or limits the owner's right to the property that would otherwise

exist in the absence of the governmental action; and ii) is the producing cause of a reduction of at least 25% in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect.

Promulgation and enforcement of the adopted rulemaking would be neither a statutory nor a constitutional taking of private real property. The primary purpose of the rulemaking is to repeal and replace rule language in Chapter 114, Subchapter K, Division 2, in accordance with new THSC, Chapter 386, Subchapter D, as a result of SB 1731, 85th Texas Legislature, 2017. The rules establish a voluntary program and only affect motor vehicles that are not considered to be private real property. The adopted rulemaking does not affect a landowner's rights in private real property because this rulemaking does not burden, restrict, or limit the owner's right to property, nor does it reduce the value of any private real property by 25% or more beyond that which would otherwise exist in the absence of the regulations. Therefore, these adopted rules would not constitute a taking under Texas Government Code, Chapter 2007.

### **Consistency with the Coastal Management Program**

The commission reviewed the adopted rulemaking and found the adoption is a rulemaking identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2), relating to rules subject to the Texas Coastal Management Program

(CMP), and will, therefore, require that goals and policies of the CMP be considered during the rulemaking process. The commission reviewed this action for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Advisory Committee and determined that the rulemaking does not impact any CMP goals or policies because it revises a voluntary incentive grant program and does not govern air pollution emissions.

The commission invited public comment regarding the consistency with the CMP during the public comment period. No comments were received regarding the consistency of the proposed rules with the CMP.

### **Public Comment**

The commission held a public hearing on December 11, 2017. The comment period closed on December 22, 2017. The commission received oral and written comments from 679 individuals and 53 organizations, including Allpro Consulting Group, Inc. (Allpro); Bourke & Associates (Bourke); BSA Amarillo Diagnostic Clinic (BSA); Buchanan Technologies (Buchanan); Circular Energy, Inc. (Circular); City of Austin, Public Works Department (COA); CNG 4 America, Inc. (CNG4); Cooper General Contractors (Cooper); DMMGT, LLC (DMMGT); dwg. (DWG); Dynamic Systems Inc. (Dynamic); Energy Market Exchange (EME); Epcon Industrial Systems, LP (Epcon); Fagin Partners (Fagin); Formation, LLC (FORM); Friedman Realty Group, LLC (Friedman); Greater Houston Natural Gas Vehicle Alliance (GHNGVA); Group CBS, Inc. (GCBS); HeartPlace (Heart);

Hewlett Packard Enterprise (Hewlett); Houston Electric Auto Association (HEAA); Jones & Spross, PLLC (Jones); Josh Bryant Engineering Services, LLC (Bryant); Kendra Scott, LLC (Kendra); Law Offices of Hunter Biederman & Burleson, P.L.L.C. (Biederman); Magnitude Software (Magnitude); Mid America Mortgage, Inc. (MAM); MUY! (MUY); Napa Flats Wood-Fired Kitchen (Napa); Nat G CNG Solutions (NatG); joint comment from North Central Texas Council of Governments and Regional Transportation Council, the Metropolitan Planning Organization for the Dallas-Fort Worth Area (NCTCOG and RTC); NORTHMAX (NORTH); OZEM Texas, L.L.C. (OZEM); Plug-In Texas (Plug-In); Revival Across America (Revival); Sierra Club, Lone Star Chapter (Sierra); Silva Law Group, PLLC (Silva); Stambush Staffing (Stambush); Stone & Horne, LLP (Stone); TAS Energy (TAS); Tesla; Texas Automobile Dealers Association (TADA); Texas Health Resources (THR); Texas Spine Consultants (TSC); The Cave Realty Team at Keller Williams (Cave Realty); The Friedkin Group on behalf of Gulf States Toyota, Inc. (GST); The Hunter Group (THG); The Johnson Law Group (Johnson); VerifyComply.com (Verify); Warren Recruiting, Inc. (Warren); Westport; and Zimmerman Interests, Inc. (Zimmerman).

Nineteen commenters expressed general support for the proposed rules or for providing vehicle rebates in general. Twenty-one commenters expressed general support for the proposed rules or providing rebates in general and provided recommendations for changes. Six hundred and eighty-two commenters provided comments against parts of the proposed rulemaking and recommended changes. Ten

commenters provided general comments not directly discussing the general or specific portions of the proposed rules.

The commission also received comments from nine individuals and two organizations that were submitted after the close of the comment period. These late comments are not listed and discussed in the Response to Comments section, but all of the late comments were generally similar to the other comments recommending that vehicles purchased outside of Texas be eligible for a rebate under the LDPLIP.

## **Response to Comments**

### *Comment*

Seven individuals, COA, Sierra, and Zimmerman commented in support of the rulemaking and the LDPLIP incentives. In addition, seven individuals, GCBS, and THG expressed support for incentives for electric vehicle purchases in general.

Twelve individuals, Bourke, Buchanan, Circular, GST, Magnitude, NCTCOG, Plug-In, RTC, and TADA expressed support for the LDPLIP and the goals of the program, while also either recommending changes or commenting against a part of the rulemaking.

### *Response*



**The commission appreciates the support expressed for the rulemaking and the LDPLIP. No changes to the proposed text were made as a result of the general statements of support.**

*Comment*

NCTCOG and RTC expressed support for the proposal in §114.610(3) to use the statutory definition of "Light-duty motor vehicle" from THSC, §386.151(a), which includes all vehicles with a GVWR of 10,000 pounds or less. NCTCOG and RTC also expressed support for not incorporating specific weight references in §114.612 that had been in the previous LDPLIP rules that varied based on fuel type. NCTCOG and RTC stated that this definition and simplification will expand eligibility and allow for greater participation while streamlining the program.

Sierra commented in support of the provision to require that vehicles eligible for the incentives be rated at 10,000 pounds or less, which generally matches the statutory definition. Sierra stated that while there may be some vehicles heavier than 10,000 pounds that could in theory enjoy the incentives, it believes the intent of the legislation and program was to spur new investment in cleaner light-duty vehicles and that there are other programs in the Texas Emissions Reduction Plan (TERP) to incent heavier vehicles.

*Response*

**The commission agrees with these comments. THSC, §386.151(3), defines "Light-duty motor vehicle" as a vehicle with a GVWR of less than 10,000 pounds. THSC, §386.153(d), also authorizes the commission to revise by rule the standards for the maximum unloaded vehicle weight rating and GVWR of an eligible vehicle to ensure that all vehicle weight configurations available under one general vehicle model may be eligible for an incentive. As authorized under THSC, §386.153(d), the proposed rules modify the definition of "Light-duty motor vehicle" to increase the maximum GVWR from "less than 10,000 pounds" to include vehicles with a GVWR of "10,000 pounds or less." This small increase in the GVWR limit is proposed because certain vehicle models that generally have configurations that are less than 10,000 pounds GVWR may also include a few configurations with a GVWR of 10,000 pounds. No changes were made to the proposed text in response to these comments**

*Comment*

CNG4, GHNGVA, NatG, and Westport recommended changes to the proposed definition of "Light-duty motor vehicle" under §114.610(3). The proposed definition specifies that a light-duty motor vehicle is a motor vehicle with a GVWR of 10,000 pounds or less. CNG4, GHNGVA, and NatG recommended that the commission use the Federal Highway Administration vehicle classification of "light-duty truck," which includes vehicles up to 14,000 pounds GVWR. Westport also recommended that the definition of "Light-duty motor vehicle" be changed to allow for vehicles up to 14,000 pounds GVWR.

***Response***

**The commission does not agree with the recommendation to increase the GVWR to 14,000 pounds in the definition of "Light-duty motor vehicle." THSC, §386.153(d), authorizes the commission to revise by rule the standards for the maximum unloaded vehicle weight rating and GVWR of an eligible vehicle to ensure that all vehicle weight configurations available under one general vehicle model may be eligible for an incentive. An increase of the GVWR limit to 14,000 pounds would extend the program to new vehicle models over 10,000 pounds GVWR. The authorization in THSC, §386.153(d), does not provide for the commission raising the GVWR limits to include additional vehicle models. No changes were made to the proposed text as a result of these recommendations.**

***Comment***

GST and TADA recommended that the proposed definition of "Retail Sale" under §114.610(6), be removed and that the term be removed from the definition of "New light-duty motor vehicle" under §114.610(5). GST and TADA also recommended that references to the term under §114.612(a)(1)(D), be removed. Both GST and TADA commented that the term "retail sale" could be eliminated since its only applicability was in relation to the references to "first title" and the definition of "Sell in this state" that were in prior drafts of the proposed rules, but were not included in the published proposal.

***Response***

The commission agrees that the use of the term "first retail sale" should be changed, but not for the reasons outlined by GST and TADA. Instead of removing the term, the commission has determined that the term "first sale," which was used in the previous version of the LDPLIP rules, would be more appropriate than using the term "first retail sale."

The term "Retail sale" is defined under Texas Occupations Code, §2301.002(30), to mean any sale of a motor vehicle other than: A) a sale in which the purchaser acquired a vehicle for resale; or B) a sale of a vehicle that is operated in accordance with Texas Transportation Code, §503.061. Texas Transportation Code, §503.061 pertains to vehicles operated by a dealer under a dealer's license plate.

The term "First sale" is defined in Texas Transportation Code, §501.002(8), to mean: A) the bargain, sale, transfer, or delivery of a motor vehicle that has not been previously registered or titled, with intent to pass an interest in the motor vehicle, other than a lien, regardless of where the bargain, sale, transfer, or delivery occurred; and B) the registration or titling of that vehicle.

The commission originally proposed using the term "first retail sale" in the rules as a more explanatory term than using the term "first sale," which was used in the

**previous LDPLIP rules. However, because the term "First sale" is defined in the Texas Transportation Code and refers to the status of the motor vehicle, including the registration and titling of the vehicle, the commission has determined that this term would be more appropriate to use in the LDPLIP rules.**

**The reference to "first retail sale" in the definition of "New light-duty motor vehicle" under §114.610(5) is changed from the proposed text to refer to "first sale." Also, the definition of "Retail sale" under §114.610 is changed to refer to "First sale" and the definition is changed to read that the term has the meaning as defined under Texas Transportation Code, §501.002. Also, the term "first retail sale" referred to twice in §114.612(a)(1)(D) is changed to read "first sale."**

#### *Comment*

NCTCOG and RTC expressed support for not incorporating specific weight references in §114.612 that had been in the previous LDPLIP rules and that varied based on fuel type. NCTCOG and RTC stated that this definition and simplification will expand eligibility and allow for greater participation while streamlining the program.

#### *Response*

**The previous LDPLIP rules included reference to requirements that an electric vehicle be rated at not more than 8,500 pounds unloaded vehicle weight, while a compressed natural gas (CNG) or liquefied petroleum gas (LPG) vehicle be rated not**

to exceed 9,600 pounds unloaded vehicle weight. These references to unloaded vehicle weight were not included in the LDPLIP statutory provisions enacted under SB 1731 and, therefore, are not included in the proposed rulemaking. The commission agrees that by not including weight references in the statute that would limit the weight of an electric vehicle to below the 10,000 pounds GVWR referred to in the definition of "Light-duty motor vehicle," the legislature simplified the criteria and allowed for the possibility of additional electric vehicle models to be eligible under the program. No changes to the proposed text were made as a result of these comments.

*Comment*

Sierra commented that it supports the requirement in §114.612(a) for the commission to publish the list of eligible vehicles on the commission's website. Sierra commented that it believes that by making manufacturers report to the TCEQ which vehicles they are producing that will be eligible and then publishing that on its website, the program will be able to be promoted by both TCEQ and by dealers who carry these vehicles, either for purchase or lease.

*Response*

The commission agrees that dealers who carry the eligible vehicles will be able to use the published list to promote the program to potential buyers or lessees. No changes to the proposed text were made as a result of these comments.

*Comment*

NCTCOG and RTC commented on the provision in §114.612(a)(1)(D) regarding the eligibility of vehicles in which a CNG or LPG system was installed after the first retail sale, but within 500 miles of operation after the first retail sale. NCTCOG and RTC commented that based on NCTCOG's experience administering grant funds for alternative fuel vehicle projects, they are aware of circumstances in which the negative impacts of improper installation of aftermarket systems undermined the benefits that would have otherwise have been gained from conversion of vehicles to alternative fuels, even when the installed system met all applicable federal and state requirements. NCTCOG and RTC recommended additional language in §114.612(a)(1) that requires any CNG or LPG system that is installed after first retail sale to have been installed by a Qualified Vehicle Modifier (QVM).

*Response*

**The commission does not agree with the recommendation by NCTCOG and RTC. The term "qualified vehicle modifier" is a unique term used by Ford Motor Company to identify conversion companies it has approved to install CNG or LPG conversion systems on new Ford vehicles and where the Ford vehicle warranty would not be affected. Other vehicle manufacturers, such as General Motors, have identified conversion system installers that it will use as part of a flow-through process for providing a converted vehicle to the purchaser as part of the new**

vehicle purchase. However, not all vehicle manufacturers have approved certain conversion companies for conversion of their vehicles after the vehicle is purchased. Also, while Ford has identified a substantial number of QVMs, some of which are located in Texas, it is not clear how many of the other vehicle manufacturers have approved certain conversion system installers for conversion of that manufacturer's vehicle to operate on CNG or LPG, and if those installers are located in Texas. The statutory language does not require that conversion system installers have received approval or authorization from the vehicle manufacturer, and not all vehicle manufacturers have established that type of system.

Alternatively, it is the commission's understanding that conversion system installers will have approval or authorization from the conversion system manufacturer to perform the installations and that the conversion system manufacturer warranty provisions would apply.

The commission will consider including information on the eligible vehicle list and in the application materials to explain that the conversion of an engine or vehicle to operate on an alternative fuel may impact the original engine or vehicle warranty, and that the purchaser or lessee should obtain a full understanding of the warranty coverage of the vehicle, engine, and conversion system, and the entity responsible for that coverage.

No changes to the proposed text were made in response to these comments.



*Comment*

Two individuals commented that the rebates were skewed towards natural gas and not electric vehicles.

*Response*

The commission acknowledges that the eligible rebate amount for a vehicle powered by CNG or LPG is set higher than the rebate amount for a vehicle powered by a hydrogen fuel cell or other electric drive. Under §114.612(b) the rebate for the purchase or lease of a light-duty motor vehicle powered by CNG or LPG is up to \$5,000. Under §114.612(c), the rebate for a vehicle powered by a hydrogen fuel cell or other electric drive is up to \$2,500. The rebate amounts included in the proposed rules implement the criteria established in THSC, §386.154(a) and (d). Although the legislature set a higher rebate amount for CNG and LPG vehicles, THSC, §386.154(c), also limits the incentives for these vehicles to 1,000 vehicles for each state fiscal biennium, while the number of incentives that may be issued for hydrogen fuel cell and other electric drive vehicles is set at 2,000 vehicles for each state fiscal biennium under THSC, §386.154(e). No changes to the proposed text were made as a result of this comment.

*Comment*

NCTCOG and RTC expressed support for the proposed criteria of §114.612(d)(1) that limits incentive eligibility to purchases made after the date established by the TCEQ in the application solicitation. They commented that structuring eligibility in this manner helps ensure that these valuable incentive dollars have the intended impact of motivating alternative fuel vehicle purchases that may not have happened without the availability of these funds.

GHNGVA commented that it would like for the commission to make the dates retroactive or at least correspond with the manufacturer's order dates. GHNGVA stated that this would help with the whole process, and it would also include vehicles that are available and not lead to a lag of vehicles that are not available based on the manufacturer's order dates.

NatG asked the commission to please consider making the eligibility date for the grants retroactive to September 1, 2017. NatG explained that any light-duty vehicle that has been converted and titled by a Texas dealership after September 1, 2017 can easily be identified, and that grants awarded to fleets purchasing vehicles from September 1, 2017, up to the application opening date, will be incentivized to purchase more in the future. NatG also asked the commission to keep in mind that the order book for the vehicle manufacturers may close early this year, making the window for customers to order very narrow without having to wait for 2019 production and certification.

One individual commented that Texas should not only implement the rebate for Tesla but give existing Tesla owners the rebate retroactively.

One individual commented that vehicle deposits were made prior to the legislation and that credits/incentives should still be honored.

***Response***

**These comments are outside the scope of the rulemaking and pertain to the commission's implementation of the program. The commission agrees that there are a number of factors the commission will need to take into account in determining the limits on when a vehicle may have been purchased in order to qualify for an incentive. Those limits will then be included in the rebate solicitation and application documents.**

***Comment***

NCTCOG and RTC commented in support of the requirement in §114.612(d)(3) that an applicant for the rebate certify that the vehicle will be registered and operated in Texas for at least one year. NCTCOG and RTC also recommended that the TCEQ verify compliance with the registration requirement by confirming whether the vehicle is still registered one year from the incentive date through coordination with the Texas Department of Motor Vehicles (TxDMV).

***Response***

**The commission agrees that some type of monitoring is warranted to verify compliance with the registration requirements. For the previous LDPLIP, the commission checked the TxDMV records on a sample of approximately 200 rebate recipients. Those vehicles were still registered in Texas after one year. If there had been vehicles that were not registered, the commission would have expanded the sampling. The commission intends to perform similar checks on vehicles for which a rebate is provided under this new program. No changes to the proposed text were made in response to these comments.**

***Comment***

TADA commented that the removal by the commission of the "first title" and "sell in this state" language from an earlier version of the proposal was proper and confirmed the policy that TERP dollars should not be incentivizing purchases made outside of the state of Texas. TADA commented that the policy is consistent with proposed §114.612(f) providing for only one incentive for each eligible new light-duty motor vehicle purchased or leased in the state. TADA commented that the policy is also consistent with the manufacturer's report under §114.613(a) regarding the vehicles the manufacturer intends to sell in this state through its franchised dealers, which is the legal conduit for these transactions to occur in the state. TADA commented that the commission should not allow artificial constructs and new definitions to allow for out-

of-state purchases to qualify for these Texas incentives. TADA encouraged the commission to stay committed to this policy, as it believes that it follows the intent of the legislation that Texas funds be used for vehicles purchased in the state of Texas.

Plug-In commented that Plug-In automotive section members are appreciative of the commission's recognition of the legislative intent that Texas taxpayer-generated and Texas vehicle-generated TERP grants are intended for LDPLIP eligible vehicles purchased or leased in Texas via Texas licensed franchise automobile dealers and intended to be used in Texas. Plug-In commented that the removal by the commission of the "first title" and "sell in this state" language from an earlier version of the proposal was important to confirm the Texas specific sale status.

GST commented that it believes that the published proposed rules more accurately reflect the legislative intent found in SB 1731. GST commented that, in renewing the LDPLIP, it understands that the legislature intended only for new motor vehicle purchases and leases conducted through licensed Texas dealerships to qualify for the applicable incentives. GST commented that SB 1731 amends THSC, Chapter 386, including multiple references in §§386.158 - 386.160 to "dealers and leasing agents," which must be licensed in the state of Texas by the TxDMV. GST commented that Texas law is clear that a manufacturer is generally prohibited from acting in the capacity of a dealer, including, for example, by engaging in the sale of new motor vehicles in Texas. GST commented that Texas Occupations Code, Chapter 2301,

governs the distribution and sale of motor vehicles in Texas, and that a dealer must hold a general distinguishing number issued by the TxDMV. GST commented that there is no indication that the legislature intended for there to be a different definition of the word "dealer" or for the word "dealer" to take on any different meaning as part of SB 1731. GST further commented that the commission's removal of language referring to "first title" and "sell in this state" would tend to bring the proposed rules more in line with the original intent of the LDPLIP as created by SB 5 during the 77th Texas Legislature in 2001 and the changes made to the program under SB 1727 during the 83rd Texas Legislature in 2013. GST commented that it is unaware of anything in the legislative history of SB 1731 that would indicate an intent by the legislature to materially alter eligibility under this program beyond new motor vehicles sold through Texas licensed franchised new motor vehicle dealers.

***Response***

**The commission agrees that there is nothing in the legislative record to indicate that the legislature intended for the term "sell in this state" under THSC, §386.155, to mean anything other than the plain language meaning of the term.**

**THSC, §386.155(a), requires that a manufacturer of motor vehicles, an intermediate or final state vehicle manufacturer, or a manufacturer of CNG or LPG systems provide to the commission by July 1 of each year preceding the vehicle model year a list of the new vehicle models or CNG or LPG systems models that the**

**manufacturer intends to sell in this state during that model year that meet the incentive requirements under THSC, §386.154. The LDPLIP rules implement these provisions.**

**Although there are vehicle manufacturers located outside of Texas that use a direct sales process and that may solicit purchases from buyers in Texas, the sales transaction occurs outside of Texas. Similarly, a person that resides in Texas may purchase a vehicle from a dealer located in another state and bring that vehicle back into the state. In that case, the sales transaction also occurs in the other state. Therefore, because these transactions occur outside of Texas, neither of these purchases would be eligible for a rebate under the LDPLIP.**

**Also, the use of the term "sell in this state" and the commission's interpretation of the term are consistent with the language and interpretation used in the commission's implementation of the previous LDPLIP.**

**No changes were made to the proposed text as a result of these comments.**

*Comment*

Twelve individuals, Bourke, Buchanan, and Magnitude commented in general support of the LDPLIP, but commented against the provision in §114.613 that only vehicles a manufacturer intends to "sell in this state" would be eligible for an incentive. An

additional 637 individuals, Allpro, BSA, Biederman, Bryant, Cave Realty, Circular, DMMGT, DWG, Dynamic, EME, Epcon, Fagin, FORM, Friedman, HEAA, Heart, Hewlett, Johnson, Jones, Kendra, MAM, MUY, Napa, NORTH, OZEM, Revival, Silva, Stambush, Stone, TAS, Tesla, THR, TSC, Verify, and Warren also commented against only allowing vehicles sold by a dealer in Texas to be eligible for an incentive. More specific comments from these entities are explained further in this Response to Comments section.

Five hundred and thirty-nine individuals, Allpro, BSA, Biederman, Bourke, Bryant, Buchanan, Cave Realty, Circular, DMMGT, DWG, EME, Fagin, HEAA, Hewlett, Johnson, Jones, Kendra, MAM, Magnitude, MUY, NORTH, OZEM, Revival, Stambush, Stone, TAS, Tesla, THR, TSC, and Verify commented that they own, plan to own, or otherwise support the eligibility for a rebate of vehicles manufactured by Tesla. These commenters discussed a range of reasons why they support Tesla. Commenters discussed that Tesla uses a direct sales model where the vehicle is purchased directly from the manufacturer instead of going through a franchised dealer in Texas. Many of the commenters discussed that Tesla is an American company. Commenters also explained their support for Tesla because Tesla vehicles have a greater range between charges than other electric vehicles and that Tesla now has a model that will cost \$35,000, making it much more affordable. Tesla stated that it thinks that a rebate, like the one offered, could make the Tesla vehicles even more attainable for a larger



segment of the population. Some commenters that have owned a Tesla in the past expressed their opinion that Teslas were very reliable vehicles.

Tesla also stated that in 2001, when TERP was initially created, Tesla did not exist, nor did Tesla's sales model. Tesla stated their opinion that legislators at the time couldn't comprehend purchasing vehicles in any other way than through a local car dealer, but that the world has changed a lot since 2001. Tesla explained that Amazon deliveries, International Organization for Standardization (ISO) capabilities, and driver-assisted vehicles were all figments of the public's imagination and not something that could ever have been envisioned as being incorporated into everyday lives.

Tesla stated that the success of the TERP would only be increased by allowing Tesla customers to participate. Tesla commented that luxury sedans and sport utility vehicles account for some of the largest polluters of light-duty vehicle emissions on the road today, and that those product lines are what Tesla buyers generally are competing against. Tesla stated that every time a customer buys a Tesla Model S or a Model X, a heavy polluter is replaced with a zero-emission vehicle, truly making an impact in emissions reductions.

Two hundred twenty-four individuals, Allpro, Biederman, Bourke, Cave Realty, Epcon, Fagin, Heart, Jones, Magnitude, NORTH, Stone, Tesla, THR, and Warren commented that Tesla owners pay the same sales tax on the vehicle in Texas as other vehicle

owners and recommended that all vehicle owners that pay sales tax on the purchase of an electric vehicle should be eligible for a rebate, regardless of whether the vehicle was purchased in Texas.

One hundred seventy-five individuals, Dynamic, HEAA, Kendra, MUY, Revival, and Stambush also recommended that vehicles from all manufacturers should be eligible for a rebate. Several of the commenters stated that the commission should not be picking winners and losers from among vehicle manufacturers or that the commission should not discriminate between manufacturers.

Thirty-one individuals, Heart, Hewlett, Jones, MAM, and OZEM expressed concern with the influence of dealers, dealer associations, or lobbyists on policies that exclude Tesla or other out-of-state manufacturers from participating in the rebates.

Two individuals and Stone expressed their opinion that the exclusion of Tesla or other vehicles not purchased in Texas violates the Fourteenth Amendment Equal Protection Clause of the United States Constitution. One of these individuals stated that they have standing to challenge this law based on a determination that the law is potentially unconstitutional. This individual stated that they think filing a lawsuit would be a tremendous waste of time and resources for the individual and the state of Texas, but that there are many more Tesla drivers coming on board daily in Texas. This individual commented that the individual and other Tesla owners would have to consider a

lawsuit to challenge the application of this program, which clearly is being done in a way to discriminate against one vehicle manufacturer in spite of the fact that their vehicles meet all of the stated purposes behind the rebate program.

One individual stated that prohibiting vehicles purchased out-of-state from receiving a rebate is likely a violation of the Commerce Clause, which prohibits discrimination against interstate commerce. They stated that this would be a violation of the United States Constitution, Article I, §8, Clause 3 because of the disparate impact it has on out-of-state commerce. Additionally, they commented that the United States Supreme Court has held that violations of the 'dormant Commerce Clause' may be brought pursuant to 42 United States Code §1983 and cited *Dennis v. Higgins*, 498 U.S. 439. Therefore, the commenter stated that a constitutional challenge to the program's administration, if found unconstitutional, could result in substantial legal fees being incurred by TCEQ.

Two individuals commented that otherwise qualifying purchases not occurring in the state must still be registered in the state of Texas and pay equivalent sales or use tax as the taxes paid on purchases that occur in the state. These commenters also stated that all such purchases equally contribute to air quality benefits for the state of Texas, which is the purpose of the rebate program. The commenters stated that a literal reading of THSC, §386.155(a), is contrary to the purpose of the incentive and the apparent intent of the legislature in creating this clean air incentive. The commenters

further stated that even the definition of "Retail sale" of motor vehicles from the Texas Occupations Code is not geographically limited to "in this state," and that if the legislature had intended to disqualify Tesla sales, a geographically limited version of "Retail sale" could have been adopted, or else the language qualifying actual purchases could have specified sales in the state or sales from Texas automobile dealers. The commenters stated that this is not the case and, therefore, we must look more closely at THSC, §386.155, and determine if the proposed rule is faithful to, at least, a literal reading of the statute. The commenters stated that the proposed regulation adopts the language "sell in this state" in two places, one of which, §114.613(c), is clearly not justified by a literal reading of the statute. The commenters stated that to see why, review THSC, §386.155(b), which states that the commission may supplement the information provided under subsection (a) with additional information on available vehicle models, including information provided by manufacturers or installers of systems to convert new motor vehicles to operate on CNG or LPG. The two individuals stated that this subsection clearly provides the commission with authority to add other qualifying vehicles such as those made by Tesla. The commenters stated that the qualifier following the comma, "including information...." is not restrictive -- that is, "includes" but is "not limited to" CNG and LPG conversions, and that nowhere is the additional information on vehicle sales qualified geographically. The commenters stated that the proposed regulation, §114.613(c), errs in using the phrase "in this state" to apply to supplementary information on qualifying vehicle models submitted by manufacturers. The commenters recommended that §114.613(c) be corrected to

exclude the phrase "in this state," and that the commission should adopt language allowing inclusion of other qualifying motor vehicles in the rebate program.

One of the individuals commented in support of the previous draft version of the proposed rules, before the current proposed rulemaking was published for public comment. That commenter stated that they supported the proposed definitions for the terms "First title" and "Sell in this state." The previous draft version of the rules would have included a definition of the term. "First title" to mean the initial title issued after the first retail sale of the new vehicle, with no previous title having been issued after manufacture of the vehicle. The term "Sell in this state," as it applies to new vehicles, would have been defined as where the manufacturer intends for the vehicle to be available to a purchaser in Texas. Based on the apparent intent of these comments, this individual is included in the enumeration of the number of individuals and organizations commenting against the provision that only vehicles sold in Texas are eligible for an incentive.

### ***Response***

**The commission appreciates the comments provided by the large number of individuals and organizations that support the further use of electric vehicles in Texas. The commission agrees that increased use of vehicles with cleaner, less polluting engines is an important goal of the LDPLIP and the TERP in general.**

However, the commission has determined that there is nothing in the legislative record to indicate that the legislature intended for the term "Sell in this state" under THSC, §386.155, to mean anything other than the plain language meaning of the term.

THSC, §386.155(a), requires that a manufacturer of motor vehicles, an intermediate or final state vehicle manufacturer, or a manufacturer of CNG or LPG systems provide to the commission by July 1 of each year preceding the vehicle model year a list of the new vehicle or CNG or LPG systems models that the manufacturer intends to sell in this state during that model year that meet the incentive requirements under THSC, §386.154. The LDPLIP rules implement this statutory provision.

Although, there are manufacturers located outside of Texas, such as Tesla, that use a direct sales approach and that may solicit purchasers from Texas, the sales transaction occurs outside of Texas. Similarly, a person that resides in Texas may purchase a vehicle from a dealer located in another state and bring that vehicle back into the state. In that case, the sales transaction also occurs in the other state. Therefore, neither of these vehicles are eligible for a rebate under the LDPLIP. Additionally, the statutory provisions say nothing about vehicles purchased outside of Texas being eligible as long as the owner pays Texas sales tax.

The use of the term "sell in this state" and the commission's interpretation of the term are consistent with the language and interpretation used in the commission's implementation of the previous LDPLIP. If the legislature intended for there to be a different meaning ascribed to the term "sell in this state," the legislature had the opportunity to clarify its intent when re-establishing the LDPLIP provisions in SB 1731.

In response to the comments that the exclusion of Tesla or other vehicles not purchased in Texas violates the Fourteenth Amendment Equal Protection Clause, the proposed rules implement the statutory language as found in SB 1731. These rules do not infringe on any individual's right to purchase vehicles out of state, and they do not deny equal protection of the laws to any individual.

In response to the comments that the exclusion of Tesla or other vehicles not purchased in Texas violates the Commerce Clause of the United States Constitution, the rules do not infringe on the rights of individuals to engage in interstate commerce. The case cited by the commenter, *Dennis v. Higgins*, 498 U.S. 439 (1991) involved the constitutionality of certain "retaliatory" taxes and fees imposed by the state of Nebraska on motor carriers with vehicles registered out of state but operated in Nebraska. That set of facts is wholly different from the incentive program under the LDPLIP. The LDPLIP, as directed by the language in SB 1731, provides an incentive for qualifying vehicles purchased in the state of Texas; it

**does not impose a tax on or prohibit the purchase of vehicles out of state. The incentive is also not a tax rebate as referred to by the commenter. It merely provides an incentive to purchase qualifying vehicles in the state of Texas.**

**Also, the commission does not agree with the comments by two individuals that THSC, §386.155(b), authorizing the commission to supplement the information provided by manufacturers under THSC, §386.155(a), authorizes the commission to include vehicles not sold in Texas. This provision allows the commission the opportunity to correct errors, include missing information about certain vehicle models, and add additional information about the vehicle models meeting the requirements of THSC, §386.155(a), including the requirement that the vehicle will be sold in Texas.**

**No changes were made to the proposed text as a result of these comments.**

*Comment*

Of the individuals commenting against the requirement that only vehicles sold in Texas would be included on the list of eligible vehicles, one individual also referred to language in the Executive Summary Memorandum to the Commissioners dated October 13, 2017, regarding the proposed rulemaking. The commenter noted language in the memorandum that said that staff expects interest in the provisions regarding the sale of a vehicle in Texas and that stakeholders have differing views regarding the eligibility



of these vehicles. The commenter asked who are the stakeholders that have differing views regarding the eligibility of these vehicles. The commenter also asked about Attorney General opinions related to consumer protection of purchasing ANY products directly from manufacturers, and not just vehicles.

***Response***

**The commission recommends that the commenter refer to the previous comments and response to comments, which note comments both in support of the proposed regulations and those against the regulations pertaining to the requirement that only vehicles sold in Texas are eligible for an incentive.**

**Regarding the questions about any Attorney General opinions related to consumer protection for purchasing products directly from manufacturers, it is recommended that the commenter contact the Office of the Attorney General of Texas at (512) 463-2100 for information on requesting Attorney General opinions. No changes to the proposed text were made as a result of these comments.**

***Comment***

One individual commented that the rule requirements for vehicle manufacturer submissions under §114.613(a) appear to be limited to natural gas vehicles. The commenter recommended that this difference be clarified, with an explicit statement of the requirements for electric vehicle manufacturers.

NCTCOG and RTC also recommended changes to increase clarity of the manufacturer reporting requirements under §114.613(a). In addition, NCTCOG and RTC recommended that the report provided by manufacturers of CNG and LPG systems include a list of QVMs who are authorized to install the eligible system on an eligible vehicle. NCTCOG and RTC recommended that this list of QVMs either be endorsed by the relevant vehicle manufacturers prior to submittal by the system manufacturers or be confirmed with the vehicle manufacturers by the TCEQ independently. NCTCOG and RTC recommended that the qualifying vehicle list posted by the TCEQ on its website as part of the program should include the QVM information. NCTCOG and RTC provided proposed language for §114.613(a) as follows: "A manufacturer of new light-duty motor vehicles or an intermediate or final state vehicle manufacturer shall provide to the executive director, or the executive director's designee, a list of the new light-duty motor vehicle models that the manufacturer intends to sell in this state during the model year and that are certified to meet the eligibility requirements under 114.612(a). A manufacturer of CNG or LPG systems shall provide to the executive director, or the executive director's designee, a list of the CNG or LPG systems that it intends to sell in this state during the model year, along with a list of the new light-duty vehicle models in which the systems are approved for installation and qualified vehicle modifiers who are authorized to perform proper installation."

***Response***

The commission has determined that the rule language sufficiently explains the requirements in order to provide for implementation by the commission. The reporting instructions and forms the commission intends to make available to manufacturers will be very clear regarding how to report on either the vehicle models a manufacturer intends to sell in Texas, or the eligible CNG and LPG systems a manufacturer intends to make available in Texas for installation on a new light-duty motor vehicle sold in Texas. In addition, the list of eligible vehicle models and CNG and LPG conversion systems the commission is required to make available on its website will clearly delineate between vehicles, engines, and conversion systems eligible for a rebate. The rebate application forms and instructions will also provide for submission of information on the vehicle model and, if the vehicle was converted to operate on CNG or LPG, the conversion system information.

Also, the commission does not agree with NCTCOG's recommendation that the rule language require a list of QVMs that are authorized to perform proper installation. The term "qualified vehicle modifier" is a unique term used by Ford Motor Company to identify conversion companies it has approved to install CNG or LPG conversion systems on new Ford vehicles. Other vehicle companies, such as General Motors, have identified conversion system installers that it will use as part of a flow-through process for providing a converted vehicle to the purchaser as part of the new vehicle purchase. However, not all vehicle manufacturers have

**approved certain conversion companies for conversion of their vehicles after the vehicle is purchased. Also, while Ford has identified a substantial number of QVMs, some of which are located in Texas, it is not clear how many of the other vehicle manufacturers have approved certain conversion system installers for conversion of that manufacturer's vehicle to operate on CNG or LPG, and if those installers are located in Texas. The statutory language does not require that the reports from manufacturers include this information, and the commission does not agree with making it a requirement.**

**No changes were made to the proposed text in response to these comments.**

*Comment*

Bryant commented that in the last rebate program, a dealer was unaware of the program and not interested in learning about it. Bryant commented that they were disappointed and did not buy a plug-in electric vehicle. Bryant recommended that the future program not require any assistance from the dealer, and that a copy of the registration and proof of Texas sales tax paid should be sufficient.

*Response*

**This comment is outside the scope of the proposed rulemaking. The commission understands the commenter's frustration regarding a dealership that was not fully aware of the incentives under the previous LDPLIP. Under the previous LDPLIP**

statutory provisions, THSC, §386.160(c), required that the dealer or leasing agent complete and provide a form to the purchaser to verify the purchase or lease of the vehicle. That provision was not included in the new LDPLIP statutory provisions established under SB 1731. As a result, the proposed rules do not require that a specific form be completed by the dealer or leasing agent to verify the purchase. However, the commission intends to require that sufficient documentation be provided by the applicant to verify that the purchase or lease was completed and that the vehicle is eligible for an incentive. In some cases, this may require the dealer or leasing agent to include certain detailed information in the purchase or lease documents. In some cases, the applicant may be asked to obtain additional information from the dealer or leasing agent. The commission intends to make this process as simple as possible, while still ensuring the integrity of the program. The documentation and verification requirements will be explained in the solicitation and application materials. Also, an eligible vehicle may be purchased from any dealer in Texas. If a dealer is not willing to provide documentation that may be required to apply for a rebate, a purchaser has the option of going to a different dealer. No changes were made to the proposed text in response to this comment.

*Comment*

TADA commented that its members anticipate that they will be providing documentation verifying a purchase or lease of an eligible new light-duty motor vehicle in the state. TADA suggested that the forms and documentation requirements for

dealers be specified and be substantially similar to the requirements for dealers under the prior program.

Plug-In commented that to provide greater clarity for the state's auto dealers and vehicle purchasers preparing incentive forms and paperwork, Plug-In would support the inclusion of language and documents substantially similar to the previous program's reimbursement forms which were successfully utilized in Fiscal Years 2014 and 2015.

GST commented that the inclusion and utilization of forms and materials with terms and conditions substantially similar to those used in the implementation of the previous LDPLIP is necessary to successfully implement and administer the LDPLIP in accordance with the legislative intent of SB 1731. GST commented that new motor vehicle customers benefitted from dealers being able to verify incentives prior to purchase and to reserve incentives for vehicles not readily available but that had to be ordered. GST commented that the legislature once again expressly provided for dealers to perform those functions and services on behalf of their customers, and GST urged the commission to adopt substantially similar forms again to help facilitate the new vehicle purchase process for dealers and their customers. GST commented that it supports the proposed rules as published in the *Texas Register* based on the belief that the agency will again provide forms and materials substantially similar to those previously used to successfully administer this environmentally beneficial program.

***Response***

These comments are outside the scope of the proposed rulemaking. Under the previous LDPLIP statutory provisions, THSC, §386.160(c), required that the dealer or leasing agent complete and provide a form to the purchaser to verify the purchase or lease of the vehicle. That particular provision was not included in the new LDPLIP statutory provisions established under SB 1731. As a result, the proposed rules do not require that a specific form be completed by the dealer or leasing agent to verify the purchase. However, the commission intends to require that sufficient documentation be provided by the applicant to verify that the purchase or lease was completed and that the vehicle is eligible for an incentive. In some cases, this may require the dealer or leasing agent to include certain detailed information in the purchase or lease documents. In some cases, the applicant may be asked to obtain additional information from the dealer or leasing agent. The commission intends to make this process as simple as possible, while still ensuring the integrity of the program. The documentation and verification requirements will be explained in the solicitation and application materials. In addition, the commission intends to again use a reservation system to allow dealers to reserve incentives for vehicles that need to be ordered. No changes were made to the proposed text in response to these comments.

***Comment***

One individual stated they were disappointed because this bill {rule} does not help the hobbyist or enthusiast that provisions and builds his own electric vehicle in Texas and clearly would have been using and spending money earned and bought and sold and paid for the products here in the great state of Texas.

***Response***

**This comment is outside the scope of the proposed rulemaking. The statutory provisions do not authorize funding for an individual to build an electric vehicle. No changes were made to the proposed text in response to this comment.**

***Comment***

Cooper commented that it did not agree with eliminating the purchase and lease incentives for light-duty motor vehicles. Cooper stated that we need to be progressive with our laws to reduce carbon emissions and that there should be more incentives to encourage more electric vehicles from more manufacturers.

One individual commented that they opposed any reduction to incentives to lease or purchase electric motor vehicles. This individual commented that we need to continue to encourage the transition to electric to reduce our reliance on gasoline, lower the cost to operate vehicles, and support a sustainable future. The individual further stated that encouraging more people to switch to electric is a step toward these goals



and will ultimately lower the cost to produce such vehicles, thereby making them available to a broader population.

***Response***

**These comments are outside the scope of the proposed rulemaking. The proposed rulemaking is not eliminating or reducing the incentives; it is establishing new incentives under the LDPLIP. No changes were made to the proposed text in response to these comments.**

***Comment***

Three individuals submitted comments that directly focus on tax credits. One individual asked that the state not take away or reduce the \$7,500 tax credit for those who purchase these types of vehicles. Another individual supported a tax credit, and one individual stated their support for a tax break for electric car owners

***Response***

**These comments are outside the scope of the proposed rulemaking. The LDPLIP involves rebates for the purchase or lease of qualifying vehicles. The program does not provide a tax credit. Also, the \$7,500 tax credit referred to by one individual is a federal tax credit and is not associated with this program. No changes were made to the proposed text in response to these comments.**

*Comment*

One individual recommended that instead of giving the rebate to the dealers and having them pass it on to the owners, a direct claim mechanism would work better and be more transparent.

One individual commented that it is important to maintain incentives not only to the companies that provide sustainable energy products but also the consumers who purchase them. This individual commented that there is an added cost in purchasing an electric vehicle, and for those on the edge, an extra rebate incentive might just be what will help them lessen the energy footprint here in Texas. The individual commented that they appreciate the commission's consideration in insuring that the commission maintain not only company rebates but also owner rebates as the rules are finalized for this program.

*Response*

**This comment is outside the scope of the proposed rulemaking. The rebates provided under the LDPLIP go directly to the purchaser or lessee of the vehicle and not to the dealer or company providing the vehicle. No changes were made to the proposed text in response to this comment.**

*Comment*

One individual commented that the commission should not discriminate against the individual because they live in Texas, and the commission should leave the rebate alone.

***Response***

**This comment is outside the scope of the proposed rulemaking. The LDPLIP is intended to provide rebates for persons purchasing or leasing an eligible vehicle in Texas and that commit to registering the vehicle in Texas for at least one year. Also, the proposed rules establish the new LDPLIP rebate program, and the commission is not changing an existing rebate program. No changes to the proposed text were made in response to this comment.**

***Comment***

One individual commented that Texas needs to be competitive with other states.

***Response***

**The commission agrees with this comment. No changes were made to the proposed text in response to this comment.**

**SUBCHAPTER K: MOBILE SOURCE INCENTIVE PROGRAMS**

**DIVISION 2: LIGHT-DUTY MOTOR VEHICLE PURCHASE OR LEASE INCENTIVE  
PROGRAM**

**§§114.610 - 114.612, 114.616**

**Statutory Authority**

The repeal of the sections is adopted under Texas Water Code (TWC), §5.102, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, which authorizes the commission to adopt any rules necessary to carry out the powers and duties under the provisions of the TWC and other laws of this state; and TWC, §5.105, which authorizes the commission by rule to establish and approve all general policy of the commission. The repeal of the sections is also adopted under Texas Health and Safety Code (THSC), Texas Clean Air Act, §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the THSC; THSC, §382.011, which authorizes the commission to establish the level of quality to be maintained in the state's air and to control the quality of the state's air; THSC, §382.012, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; and THSC, Chapter 386, which establishes the Texas Emissions Reduction Plan.

The repeal of the sections is adopted as part of the implementation of THSC, Chapter 386, Subchapter D, established by SB 1731, 85th Texas Legislature, 2017.

**§114.610. Definitions.**

**§114.611. Applicability.**

**§114.612. Light-Duty Motor Vehicle Purchase or Lease Incentive Requirements.**

**§114.616. Manufacturer's Report.**

**SUBCHAPTER K: MOBILE SOURCE INCENTIVE PROGRAMS**

**DIVISION 2: LIGHT-DUTY MOTOR VEHICLE PURCHASE OR LEASE INCENTIVE  
PROGRAM**

**§§114.610 - 114.613**

**Statutory Authority**

The new sections are adopted under Texas Water Code (TWC), §5.102, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, which authorizes the commission to adopt any rules necessary to carry out the powers and duties under the provisions of the TWC and other laws of this state; and TWC, §5.105, which authorizes the commission by rule to establish and approve all general policy of the commission. The new sections are also adopted under Texas Health and Safety Code (THSC), Texas Clean Air Act, §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the THSC; THSC, §382.011, which authorizes the commission to establish the level of quality to be maintained in the state's air and to control the quality of the state's air; THSC, §382.012, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; and THSC, Chapter 386, which establishes the Texas Emissions Reduction Plan.

The new sections are adopted as part of the implementation of THSC, Chapter 386, Subchapter D, established by SB 1731, 85th Texas Legislature, 2017.

**§114.610. Definitions.**

Unless specifically defined in the Texas Clean Air Act (TCAA) or in the rules of the commission, the terms used in this division have the meanings commonly ascribed to them in the field of air pollution control. In addition to the terms which are defined by the TCAA and §§3.2, 101.1, and 114.1 of this title (relating to Definitions), the following words and terms, when used in this division shall have the following meanings, unless the context clearly indicates otherwise.

(1) First sale--Has the meaning as defined under Texas Transportation Code, §501.002.

(2) Lease--The use and control of a new light-duty motor vehicle in accordance with a rental contract for a term of 12 consecutive months or more.

(3) Lessee--A person who enters into a lease for a new light-duty motor vehicle.

(4) Light-duty motor vehicle--A motor vehicle with a gross vehicle weight rating of 10,000 pounds or less.

(5) Motor vehicle--A self-propelled device designed for transporting persons or property on a public highway that is required to be registered under Texas Transportation Code, Chapter 502.

(6) New light-duty motor vehicle--A light-duty motor vehicle that has never been the subject of a first sale.

**§114.611. Applicability.**

(a) The provisions of this division apply statewide subject to the availability of funding.

(b) A purchase or lease of a new light-duty motor vehicle is not eligible if it is required by any state or federal law, rule or regulation, memorandum of agreement, or other legally binding document. This subsection does not apply to:

(1) an otherwise qualified purchase or lease, regardless of the fact that the state implementation plan assumes that the change in vehicles will occur, if on the date the incentive is awarded the change is not required by any state or federal law, rule or regulation, memorandum of agreement, or other legally binding document; or



(2) the purchase or lease of a new light-duty motor vehicle required only by local law or regulation or by corporate or controlling board policy of a public or private entity.

**§114.612. Light-Duty Motor Vehicle Purchase or Lease Incentive Requirements.**

(a) The purchaser or lessee of a new light-duty motor vehicle powered by compressed natural gas, liquefied petroleum gas, or hydrogen fuel cell or other electric drive may be eligible for the incentive specified in subsection (b) or (c) of this section if the vehicle meets the requirements specified in paragraph (1) or (2) of this subsection and is listed on the list of eligible vehicles provided to the commission as specified under §114.613 of this title (relating to Manufacturer's Report). By August 1 of each year this division is in effect and appropriations are available to fund this program the commission will publish on its website a list of the eligible vehicles provided to the commission as specified under §114.613 of this title. Eligible vehicles include:

(1) a new light-duty motor vehicle powered by compressed natural gas or liquefied petroleum gas that:

(A) has four wheels;

(B) was originally manufactured to comply with and has been certified by an original equipment manufacturer or intermediate or final state vehicle manufacturer as complying with, or has been altered to comply with, federal motor vehicle safety standards, state emissions regulations, and any additional state regulations applicable to vehicles powered by compressed natural gas or liquefied petroleum gas;

(C) was manufactured for use primarily on public streets, roads, and highways;

(D) has a dedicated or bi-fuel compressed natural gas or liquefied petroleum gas fuel system installed prior to first sale or installed in Texas within 500 miles of operation of the vehicle following first sale, and with a range of at least 125 miles as estimated, published, and updated by the United States Environmental Protection Agency; and

(E) has, as applicable, a:

(i) compressed natural gas fuel system that complies with the 2013 (or newer) National Fire Protection Association (NFPA) 52 Vehicular Gaseous Fuel Systems Code and American National Standard for Basic Requirements for

Compressed Natural Gas Vehicle Fuel Containers, commonly cited as "ANSI/CSA NGV2"; or

(ii) liquefied petroleum gas fuel system that complies with the 2011 (or newer) NFPA 58 Liquefied Petroleum Gas Code and Section VII of the 2013 (or newer) American Society of Mechanical Engineers Boiler and Pressure Vessel Code; or

(2) a new light-duty motor vehicle powered by electric drive that:

(A) has four wheels;

(B) was manufactured for use primarily on public streets, roads, and highways;

(C) the powertrain has not been modified from the original manufacturer's specifications;

(D) has a maximum speed capability of at least 55 miles per hour; and

(E) is propelled to a significant extent by an electric motor that draws electricity from a hydrogen fuel cell or from a battery that:

(i) has a capacity of not less than four kilowatt hours; and

(ii) is capable of being recharged from an external source of electricity.

(b) A person who purchases or leases a new light-duty motor vehicle powered by compressed natural gas or liquefied petroleum gas eligible for an incentive under subsection (a) of this section may be eligible to receive a \$5,000 incentive.

(c) A person who purchases or leases a new light-duty motor vehicle powered by a hydrogen fuel cell or other electric drive eligible for an incentive under subsection (a) of this section may be eligible to receive a \$2,500 incentive.

(d) To be eligible for the incentives under subsection (b) or (c) of this section, the purchaser or lessee must meet the following criteria:

(1) acquired the eligible vehicle after the date established by the commission in the application solicitation;

(2) completes the application for the Light-Duty Vehicle Purchase or Lease Incentive, providing all required information; and

(3) signs a certification that the purchaser or lessee will register and operate the light-duty motor vehicle in this state for not less than one year.

(e) Incentives must be applied for using the forms developed and provided by the commission and must include the verification of purchase or lease as may be required by the commission.

(f) Only one incentive will be provided for each eligible new light-duty motor vehicle purchased or leased in the state.

(g) The incentive shall be provided to the lessee and not to the purchaser if the eligible new light-duty motor vehicle is purchased for the purpose of leasing the light-duty motor vehicle to another person.

(h) An incentive for the lease of an eligible new light-duty motor vehicle shall be prorated based on a three-year lease term. A person who leases an eligible new light-duty motor vehicle may qualify for 33.3% of the full incentive with a one-year lease, 66.6% of the full incentive with a two-year lease, and 100% of the full incentive with a three-year lease. The incentive will only be prorated based on a full-year lease.

**§114.613. Manufacturer's Report.**

(a) In order for a manufacturer to ensure that its vehicles are included in the list of eligible vehicles to be published by the commission on its website, a manufacturer of new light-duty motor vehicles, an intermediate or final state vehicle manufacturer, or a manufacturer of compressed natural gas or liquefied petroleum gas systems shall provide to the executive director, or the executive director's designee, a list of the new light-duty motor vehicle models or compressed natural gas or liquefied petroleum gas systems, and the new light-duty motor vehicle models on which the systems are approved for installation, that the manufacturer intends to sell in this state during that model year that are certified to meet the standards listed under §114.612(a) of this title (relating to Light-Duty Motor Vehicle Purchase or Lease Incentive Requirements). The list must contain for each light-duty motor vehicle or natural gas or liquefied petroleum gas system listed:

(1) the vehicle manufacturer name, vehicle model, and vehicle model year;

(2) the intermediate or final state vehicle manufacturer name, if applicable;

(3) the compressed natural gas or liquefied petroleum gas system manufacturer name, system model, and system model year, if applicable;

(4) the engine displacement, qualifying fuel type, gross vehicle weight rating, and engine or vehicle family name as listed on the Certificate of Conformity issued by the United States Environmental Protection Agency;

(5) the compressed natural gas or liquefied petroleum gas conversion system engine or vehicle family name, if applicable;

(6) certification by the manufacturer that the vehicle and, if applicable, the compressed natural gas or liquefied petroleum gas system comply with the standards of this division; and

(7) other information as may be requested by the commission.

(b) The list required by subsection (a) of this section must be submitted to the executive director, or the executive director's designee, upon request initially and then no later than July 1 of each year preceding the new vehicle model year.

(c) A manufacturer of new light-duty motor vehicles, an intermediate or final state vehicle manufacturer, or a manufacturer of compressed natural gas or liquefied

petroleum gas systems may supplement the list required by subsection (a) of this section to include additional new light-duty motor vehicle models or compressed natural gas or liquefied petroleum gas systems the manufacturer intends to sell in this state during the model year.